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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )

Implementation of the Cable Television )  
Consumer Protection and Competition Act )  
of 1992 )

MM Docket No. 92-264

Horizontal and Vertical Ownership )  
Limits, Cross-Ownership Limitations )  
and Anti-Trafficking )

TO: The Commission

**REPLY COMMENTS OF STARSIGHT TELECAST, INC.**

StarSight Telecast, Inc. ("StarSight"), by its undersigned counsel, hereby submits these Reply Comments on the Commission's Report and Order and Further Notice of Proposed Rule Making in this proceeding.

**I. Background and Preliminary Statement**

On July 23, 1993, the Commission released a Report and Order and Further Notice of Proposed Rule Making<sup>1/</sup> seeking further comment on the appropriate level at which to establish channel occupancy limits and the proper application of such limits to

<sup>1/</sup> Report and Order and Further Notice of Proposed Rule Making, MM Docket No. 92-264 (released July 23, 1993). ("Order and Further Notice").

specific types of programming as required by the 1992 Cable Act.<sup>2/</sup> In particular, the Commission proposes to adopt a 40% limit on the number of channels that can be occupied on a cable system by programming in which the owner of a cable television system has an attributable interest. Moreover, the Commission proposes to count all activated channels in calculating system capacity; all channels occupied by affiliated programming services also would be counted towards the 40% limit. StarSight is concerned with the formula the Commission adopts to count the number of "channels."

StarSight's patented product is an interactive television program guide and VCR control service which is an easy-to-use, cost effective and accurate method of identifying, selecting and recording television programming. Broadcasters will transmit the StarSight interactive program guide to consumers through the use of the broadcast signal's vertical blanking interval ("VBI").

StarSight's television program information provides consumers with detailed television schedule information including program title, story plot and actors to help subscribers sort through the vast amount of television programming provided by cable operators. StarSight's program information also provides program attributes such as the ability to carry the recently adopted parental advisories for violent programs, close-captioned

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<sup>2/</sup> Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460, §11 (c)(2)(B). ("1992 Cable Act").

program listing and other program attributes, such as nudity or adult themes, which may be required in television program listings. The product also allows a consumer to block-out unwanted channels completely or on a temporary or program basis. Ultimately, the product enhances viewer options by affording viewers a convenient means of selecting and screening cable television programming.

The Company will be launching an operational test of StarSight to subscribers of Viacom's cable television system in Castro Valley, California, during the fourth quarter of 1993. The Company has also entered into an agreement with a subsidiary of Public Broadcasting Service Corporation ("PBS") in which most local PBS stations will transmit StarSight over its VBI. Thus, StarSight will be available to approximately 98% of all homes across the nation either through over-the-air broadcasts or through cable systems which must carry a local PBS station's broadcast by the end of January, 1994.

StarSight compatible hardware and software designs are being incorporated into various models of new consumer televisions, VCRs, and cable decoders manufactured by such manufacturers as Zenith Electronics, Scientific Atlanta, General Instruments, Goldstar, Mitsubishi and Samsung. Consumers will need a StarSight decoder box or a StarSight compatible VCR or converter to use the interactive program guide and the StarSight VCR record and play-back features.

StarSight is owned by leading cable operators, broadcasters, publishers and entertainment providers including Viacom International, Cox Communications, Spelling Entertainment, Tribune Company, Times Mirror Cable Television, Providence Journal, and KBLCOM.

**II. The Entire Signal the Broadcaster Transmits Should Be Counted Toward the Channel Occupancy Limits**

Section 11(c)(2)(B) of the 1992 Cable Act requires the Commission to establish reasonable limits on the number of channels that can be occupied on a cable system by programs of a video programmer in which a cable operator has an ownership interest.<sup>3/</sup> In adopting this provision, Congress determined that the cable industry is increasingly vertically integrated and as a result, cable operators have the ability and the incentive to favor their affiliated programmers.<sup>4/</sup> Such vertical integration, Congress determined, could make it difficult for non-cable affiliated or competing cable programmers to secure carriage on vertically integrated cable systems.<sup>5/</sup> Thus, the channel occupancy limits serve as a guard against possible anti-competitive conduct by vertically integrated cable operators.

The Report and Further Notice, however, fails to define what constitutes a channel for purposes of calculating channel

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<sup>3/</sup> 47 U.S.C. § 533 (f)(1)(B).

<sup>4/</sup> Order and Further Notice, at ¶ 167.

<sup>5/</sup> 1992 Cable Act, § 2(a)(5).

occupancy limits. As such, StarSight believes that the Commission should define a channel as the entire signal which a broadcaster or cable programming entity transmits to the cable operator for retransmission. Until recently, this was not a critical issue. With the advent of new services that utilize the VBI for distribution, the definition of a channel becomes more important.

StarSight submits the definition of a channel should include the primary video signal as well the contents of the VBI which a broadcaster or cable programmer intends to transmit with the primary signal. If the Commission does not include both the primary signal and the VBI in the definition of a channel, the Commission would be condoning the very anti-competitive conduct that the 1992 Cable Act was enacted to prohibit; namely, allowing cable operators to substitute their own programming into a broadcast signal's VBI and circumvent the allowable channel occupancy limits.

By permitting the broadcaster's entire signal to be counted as a channel, this policy is also consistent with the Commission's television broadcast channel licensing policy. When a television broadcast station files for an original license or license renewal on a particular channel, the Commission grants the license or renewal for the entire broadcast signal, that is, for the primary signal as well as the VBI. StarSight submits that this definition of a channel and its subsequent application comports with the policy underlying the channel occupancy limits

and will prohibit anti-competitive behavior and increase the diversity of voices available to cable subscribers.

### III. Conclusion

For the foregoing reasons, StarSight requests that when the Commission calculates both a cable system's channel capacity and the number of channels against a system's channel occupancy limits, that it count the entire signal that a broadcaster transmits as one channel.

September 3, 1993

Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

I, Karen Wilson Buterbaugh, hereby certify that on this 3rd day of September, 1993, a copy of the foregoing "Reply Comments of StarSight Telecast, Inc." was served by hand delivery or by first class United States mail, postage prepaid on the following parties:

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